

AMENDED IN SENATE JULY 11, 1996

AMENDED IN SENATE JULY 2, 1996

AMENDED IN ASSEMBLY MAY 14, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2528

Introduced by Assembly Member Miller

February 21, 1996

An act to amend Section 89539 of the Education Code, and to amend Sections 18671.2, 18676, 19582, 19586, and 19803 of the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2528, as amended, Miller. Public employees: investigations and hearings.

(1) Existing civil service law provides that when ordered to do so, a person shall not be excused from testifying or from producing any book or paper in that investigation or hearing upon the ground that the testimony, evidence, book, or paper required of him or her may tend to incriminate or subject him or her to penalty or forfeiture.

This bill, instead, would provide that when ordered to do so, a witness shall not be excused from testifying or from producing any documentary evidence in that investigation or hearing upon the ground that the testimony or documentary evidence required of the witness may tend to incriminate or subject the witness to penalty or forfeiture, provided the witness is granted use and derivative use immunity.

This bill would also revise procedures relating to petitions for rehearing and service of decisions, as specified.

(2) Existing law requires that the State Personnel Board be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement, and authorizes the board to bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies.

This bill would provide that the board shall be reimbursed for the costs incurred in conducting hearings involving employees of the California State University and employees of counties not administering their own merit systems, and would authorize the board to bill the California State University and state departments having responsibility for the overall administration of grant-in-aid programs for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 89539 of the Education Code is
2 amended to read:

3 89539. Any employee dismissed, suspended, or
4 demoted for cause may request a hearing by the State
5 Personnel Board by filing such a request, in writing, with
6 the board within 20 days of being served with the notice.
7 The request may be on the grounds that the required
8 procedure was not followed; that there is no ground for
9 dismissal, suspension, or demotion; that the penalty is
10 excessive, unreasonable, or discriminatory; that the
11 employee did not do the acts or omissions alleged as the
12 events or transactions upon which the causes are based;
13 or that the acts or omissions alleged as the events or
14 transactions upon which the causes are based were
15 justified.

16 The State Personnel Board shall hold a hearing,
17 following the same procedure as in state civil service
18 proceedings and shall render a decision affirming,
19 modifying or revoking the action taken. In a hearing, the



1 burden of proof shall be on the party taking the dismissal
2 action.

3 An administrative employee reassigned pursuant to
4 Section 66609 may request a hearing by the trustees by
5 filing a request for a hearing, in writing, with the trustees
6 within 20 days of being served with the notice. The
7 request may be on the grounds that the required
8 procedure was not followed or that the position to which
9 the employee is reassigned is not commensurate with his
10 or her qualifications. The trustees shall hold a hearing,
11 and shall render a decision affirming, modifying, or
12 revoking the action taken.

13 The State Personnel Board may bill the California State
14 University for the costs incurred in conducting hearings
15 involving employees of the California State University
16 pursuant to Sections 89535 to 89542, inclusive.

17 SEC. 2. Section 18671.2 of the Government Code is
18 amended to read:

19 18671.2. (a) The total cost to the state of maintaining
20 and operating the hearing office of the board shall be
21 determined by the board, in advance or upon any other
22 basis as it may determine, utilizing information from the
23 state agencies for which services are provided by the
24 hearing office.

25 (b) The board shall be reimbursed for the entire cost
26 of hearings conducted by the hearing office pursuant to
27 statutes administered by the board, or by interagency
28 agreement. The board may bill the appropriate state
29 agencies for the costs incurred in conducting hearings
30 involving employees of those state agencies, *and*
31 employees of the California State University pursuant to
32 Sections 89535 to 89542, inclusive, of the Education Code,
33 *and may bill the state departments having responsibility*
34 *for the overall administration of grant-in-aid programs for*
35 *the costs incurred in conducting hearings involving*
36 employees not administering their own merit systems
37 pursuant to Chapter 1 (commencing with Section 19800)
38 of Part 2.5. All costs collected by the board pursuant to this
39 section shall only be used for purposes of maintaining and
40 operating the hearing office of the board.

1 SEC. 3. Section 18676 of the Government Code is
2 amended to read:

3 18676. When ordered to do so, a witness shall not be
4 excused from testifying or from producing any
5 documentary evidence in that investigation or hearing
6 upon the ground that the testimony or documentary
7 evidence required of the witness may tend to incriminate
8 or subject the witness to penalty or forfeiture, provided
9 the witness is granted use and derivative use immunity.

10 SEC. 4. Section 19582 of the Government Code is
11 amended to read:

12 19582. (a) Hearings may be held by the board, or by
13 any authorized representative, but the board shall render
14 the decision that in its judgment is just and proper.

15 During a hearing, after the appointing authority has
16 completed the opening statement or the presentation of
17 evidence, the employee, without waiving his or her right
18 to offer evidence in the event the motion is not granted,
19 may move for a dismissal of the charges.

20 If it appears that the evidence presented supports the
21 granting of the motion as to some but not all of the issues
22 involved in the action, the board or the authorized
23 representative shall grant the motion as to those issues
24 and the action shall proceed as to the issues remaining.
25 Despite the granting of the motion, no judgment shall be
26 entered prior to a final determination of the action on the
27 remaining issues, and shall be subject to final review and
28 approval by the board.

29 (b) If a contested case is heard by an authorized
30 representative, he or she shall prepare a proposed
31 decision in a form that may be adopted as the decision in
32 the case. A copy of the proposed decision shall be filed by
33 the board as a public record and furnished to each party
34 within 10 days after the proposed decision is filed with the
35 board. The board itself may adopt the proposed decision
36 in its entirety, may remand the proposed decision, or may
37 reduce the adverse action set forth therein and adopt the
38 balance of the proposed decision.

39 (c) If the proposed decision is not remanded or
40 adopted as provided in subdivision (b), each party shall

1 be notified of the action, and the board itself may decide
2 the case upon the record, including the transcript, with
3 or without taking any additional evidence, or may refer
4 the case to the same or another authorized representative
5 to take additional evidence. If the case is so assigned to an
6 authorized representative, he or she shall prepare a
7 proposed decision as provided in subdivision (b) upon
8 the additional evidence and the transcript and other
9 papers that are part of the record of the prior hearing. A
10 copy of the proposed decision shall be furnished to each
11 party. The board itself shall decide no case provided for
12 in this subdivision without affording the parties the
13 opportunity to present oral and written argument before
14 the board itself. If additional oral evidence is introduced
15 before the board itself, no board member may vote unless
16 he or she heard the additional oral evidence.

17 (d) In arriving at a decision or a proposed decision, the
18 board or its authorized representative may consider any
19 prior suspension or suspensions of the appellant by
20 authority of any appointing power, or any prior
21 proceedings under this article.

22 (e) The decision shall be in writing and contain
23 findings of fact and the adverse action, if any. The findings
24 may be stated in the language of the pleadings or by
25 reference thereto. Copies of the decision shall be served
26 on the parties personally or by mail.

27 SEC. 5. Section 19586 of the Government Code is
28 amended to read:

29 19586. Within 30 days after the day a copy of the
30 decision rendered by the board in a proceeding under
31 this article is served by the board upon the parties to the
32 decision, either party may petition the board for
33 rehearing of the decision. The petition for rehearing shall
34 be in writing and shall contain all of the grounds upon
35 which a rehearing should be granted.

36 Within 30 days after the filing of a petition for rehearing
37 with the board, the board shall cause notice thereof to be
38 served upon the other parties to the proceeding by
39 mailing to each a copy of the petition for rehearing. The
40 other parties to the proceeding shall have 20 calendar

1 days from the date of service of a copy of the petition for
2 rehearing to file with the board and serve upon the
3 petitioner a response to the petition for rehearing.

4 Within 60 days after service of notice of filing of a
5 petition for rehearing, the board shall either grant or
6 deny the petition in whole or in part. Failure to act upon
7 a petition for rehearing within this 60-day period is a
8 denial of the petition.

9 SEC. 6. Section 19803 of the Government Code is
10 amended to read:

11 19803. The merit system for employees engaged in
12 administering programs under Section 19800 in a local
13 agency not administering its own merit system approved
14 under this chapter shall be administered by the board.
15 This may include, but is not limited to, recruitment,
16 examination, certification, appointment and other
17 transactions, position classification, compensation
18 standards, and disciplinary actions. As part of such
19 administration, the board shall hear and decide appeals
20 of any applicant for employment or officer or employee
21 from the decision of a local agency or the board's
22 executive officer affecting the employment rights of such
23 persons. Any decision rendered in such an appeal shall be
24 binding upon the local agency.

25 The board may bill the state departments having
26 responsibility for the overall administration of
27 grant-in-aid programs for the costs incurred in
28 conducting hearings involving employees of local
29 agencies not administering their own merit systems
30 pursuant to this chapter.

